



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/1141**

**Property at Flat H, Crosslees Court, Crosslees Drive, Glasgow, G46 7RT (“the Property”)**

**Parties:**

**Mr Stuart Miller, PO Box 30125, Lilongwe, Malawi (“the Applicant”)**

**Mr Intizar Hussain, Mrs Sajida Hussain, Flat H, Crosslees Court, Crosslees Drive, Glasgow, G46 7RT (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Tony Cain (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted against the Respondents in favour of the Applicant.**

**Background**

1. The Applicant seeks an eviction order in terms of Section 51 and ground 3 of schedule 3 of the 2016 Act. A Notice to leave, section 11 notice and documentation regarding the condition of the property were submitted with the application.
2. A copy of the application was served on the Respondents and both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 1 August 2024 at 2pm. Prior to the CMD the Respondents lodged written submissions. The CMD took place on 1 August 2024. The Applicant and first Respondent participated.

3. The Tribunal noted that the Applicant had not submitted a copy of the tenancy agreement or evidence that the Notice to leave was sent or delivered. Following discussion, the Tribunal noted that the parties are agreed that the tenancy is a joint tenancy which started in 2019 and that the notice to leave was received by the Respondents on or about 23 November 2023.
4. The Tribunal asked Mr Hussain to confirm whether the application is opposed as it was not clear from his written submission. Mr Hussain told the Tribunal that the house is not habitable and is affected by damp. Although he has had bad luck with the roof at the property, Mr Miller has failed to carry out repairs. Mr Hussain has said that he has been in discussions with the Council, and they are building 4 bedroom houses in Newton Mearns but these will not be available until December 2024 and there is no guarantee that he will be offered one of them. Because of the uncertainty in relation to obtaining alternative accommodation, Mr Hussain said that he was unable to confirm whether the application was opposed. The property is a two-storey top floor flat. It has two bedrooms. He resides there with his wife and 4 children aged 21, 19, 17 and 12. His wife suffers from sciatica but otherwise they are all well.
5. Mr Miller told the Tribunal that there are only supposed to be four people living at the property, in terms of the tenancy agreement. The flat roof was replaced in 2012. A leak was reported in 2020. A leak from the toilet and the shower were both fixed. A roofer attended and identified a problem with the downpipes which are internal. This is the source of the water ingress. A similar problem has affected the adjacent block. The Council initially denied that there was a problem which caused delay. Mr Miller obtained quotes for the required work but couldn't instruct it until the roof repair work was carried out. This was completed in October 2023. The decision was then taken to seek an eviction order because the refurbishment work cannot be carried out with the tenants in occupation. There will be no toilet facilities for a month, and they will have to treat the mould and the timbers with chemicals. In response to questions from the Tribunal, Mr Miller said that his insurance will not cover temporary accommodation for the Respondents, and he cannot afford to provide this. He confirmed that he has been a landlord for 40 years and has other properties in Scotland and Malawi. The Tribunal noted that the evidence submitted in support of the eviction ground is almost a year out of date and does not provide full details of the proposed work, timescales and the level of disruption which will occur.
6. Following a short adjournment the parties were advised that the application would proceed to an in-person hearing, with an interpreter for Mrs Hussain as she does not speak English. The Tribunal suggested that the Respondents should take advice from a housing advisory service in relation to their current housing situation and the application. The Tribunal noted that the following matters would require to be established at the hearing:-
  - (a) What is the nature of the refurbishment work which is to be carried out at the property?

- (b) How long will the planned work take to carry out?
  - (c) Would it be impracticable for the tenants to continue to occupy the property given the nature of the work?
  - (d) If the Tribunal is satisfied that the Applicant intends to carry out significantly disruptive works and that it would be impracticable for the Respondents to remain in occupation of the property, would it be reasonable to grant an eviction order?
  - (e) If the Tribunal grants an eviction order, should a delay in enforcement of the eviction order be granted?
7. The parties were notified that a hearing would take place at Glasgow Tribunal Centre on 27 November 2024. The Applicant and both Respondents attended. An interpreter was also present for Mrs Hussain. Prior to the hearing, the Applicant lodged submissions, two detailed quotes from contractors and a copy of the tenancy agreement.

### **The Hearing**

8. Mr Hussain told the Tribunal that the application is opposed because he and his family do not have alternative accommodation. The Council have said to contact them if an eviction order is granted but he has no option but to oppose the application. Mr Hussain confirmed that he had reviewed the documents lodged by Mr Miller. He agrees that the house is not habitable although a failure by Mr Miller to carry out maintenance is part of the problem. It is accepted that they cannot continue to live at the property in its present condition. The damage is extensive and was caused by a leak from the roof and a leak from the shower. Although the roof was repaired Mr Hussain does not believe that the issues have fully resolved. He thinks that there is still water ingress affecting one of the bedrooms. The shower still leaks when it is used and the water drips from the bathroom to the lower level of the property. A contractor came out but didn't do anything, just said the bathroom needed ripped out.
9. In response to questions about his housing options, Mr Hussain said that he cannot afford to rent something else in the private sector. However, it will also be very difficult to obtain a Council house as he has 4 children and needs a 4 or 5 bedroom house. All his children live at home except the oldest who is studying in Aberdeen. His daughters share the second bedroom. His son sleeps downstairs. He also has a nephew visiting from Pakistan.
10. Mr Miller told the Tribunal that he needs the eviction process to be finished as soon as possible as he must get workmen into the property urgently. He said that the roof repair addressed the water ingress, but he has recently had a letter from the Council, who factor the property and own most flats. The letter indicated that there is a problem with a different part of the roof and a meeting has been arranged to discuss it. The internal work required is extensive. After it is completed, the property will need to dry out and the mould needs to be addressed. There is no way that people can live there when the work is being

carried out. Mr Miller also stated that the condition of the property has deteriorated since he started the eviction process over a year ago. He has every sympathy with the tenants. They have been good tenants, and the rent has always been paid. The only issue is the overcrowding as there are only supposed to be four occupants. In response to questions from the Tribunal, Mr Miller said that he has not decided what he will do with the property after the work is done. Either way the work is essential, and it is expensive – costing about 25% of the value of the property. He thinks it is going to be too difficult to remain a private landlord in the future with proposed changes in the law in relation to building standards. He only has one other rental property which is in Glasgow. There have been no problems with it, and it has been rented since 1994. He might sell the property after the work is done. He is in employment. There is no mortgage over the property. In response to a question about the insurance for the property, he said that it did not cover the previous repair work and will not cover the work that is required. It will also not cover the cost of rehousing the tenants and their children on a temporary basis.

11. Mr Hussain said that he works as a taxi driver. Mrs Hussain does not work, and his three older children are all at university or college. His 12 year old daughter is in second year at a school very close to the property. He is concerned that the property is currently not safe for them to live in. This is due to the mould. In addition, the bathroom is dangerous. They cannot use the light and have taped over the switch so that no one tries to use it. They cannot use the sink.
12. The Tribunal asked the parties to confirm their position about a delay in enforcement of an eviction order, if the Tribunal decided to grant an order for eviction. Mr Miller said that he is concerned about the property continuing to deteriorate and the possible risk to the Respondents. Mr Hussain said that he did not know about a possible delay, but expressed concern that the family may only have six or seven weeks to find somewhere to live or be given temporary accommodation by the Council.

## **Findings in Fact**

13. The Applicant is the owner and landlord of the property.
14. The Respondents are the tenants of the property. They reside there with three of their four children. The fourth is currently studying in Aberdeen.
15. The property requires extensive refurbishment. The work will take four to six weeks to complete.
16. The Applicant intends to carry out extensive refurbishment.
17. It will not be practicable for the Respondents and their family to reside in the property while the work is being carried out.

18. The Applicant served a Notice to leave on the Respondent on 23 November 2023.
19. The Respondents have been unable to source alternative accommodation and are at risk of homelessness if they are evicted.
20. The property is too small for the Respondents as four adults and one child reside permanently at the property.

### **Reasons for Decision**

21. The application was submitted with a Notice to Leave dated 23 November 2023. It was established at the CMD that this had been given to the Respondents on the same date. The Notice states that an application to the Tribunal is to be made on ground 3, the landlord intends to refurbish the let property.
22. The application to the Tribunal was made after expiry of the notice period. The Tribunal is satisfied that the Applicant has complied with Section 52(3), 54 and 62 of the 2016 Act. The Applicant also submitted a copy of the Section 11 Notice which was sent to the Local Authority. The Tribunal is therefore satisfied that the Applicant has complied with Section 56 of the 2016 Act.
23. Section 51(1) of the 2016 Act states, "The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy, if, on the application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies."
24. Ground 3 of schedule 3 (as amended) states, " (1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property. (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if (a) the landlord intends to refurbish the let property (or any premises of which the let property forms part), (b) the landlord is entitled to do so, (c ) it would be impracticable for the tenant to continue to occupy the property given the nature of refurbishment intended by the landlord, and (d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts."
25. From the documents submitted and the information provided at the CMD and hearing , the Tribunal is satisfied that the Applicant, as owner, is entitled to refurbish the let property and that he intends to do so. The Tribunal also notes that the parties are agreed that the property is currently not habitable, and that substantial refurbishment is required.
26. The Applicant lodged two estimates from contractors. These confirm that the following work is planned and required in relation to the bathroom, living room and both bedrooms – dehumidifier and industrial fans to remove moisture, full refurbishment of bathroom including repairs to floor and ceiling, repairs to /replacement of ceilings and walls in the other rooms, some electrical work, removal of mould and re-decoration. The contractors confirm that the property

requires to be vacant for the work to be carried out. This is not disputed by the Respondents. The Tribunal is therefore satisfied that it would be impracticable for the Respondents to continue to occupy the property during the refurbishment.

27. The Tribunal proceeded to consider whether it would be reasonable to grant the order and noted the following: -

- (a) The planned work is essential. The condition of the property is currently very poor, and the Respondents and their family are at risk of injury and damage to health because of the damaged floor in the bathroom, electrical issues in the bathroom, dampness and mould.
- (b) The Respondents have approached the Local Authority and been advised that they will not be given priority for re-housing until an eviction order is granted.
- (c) The property is currently too small and not suitable for the Respondents' needs.
- (d) The Respondents are at risk of homelessness as they have been unable to secure alternative accommodation.

28. Although the impact of an eviction order is likely to be significant and highly disruptive for the Respondents and their children, their current living conditions are unacceptable and hazardous. Weighing up the factors outlined in paragraph 27, the Tribunal is satisfied that it would be reasonable to grant the eviction order.

29. The Tribunal concludes that the Applicant has complied with the requirements of the 2016 Act and that ground 3 has been established. For the reasons outlined in paragraph 26 and 27 the Tribunal is also satisfied that it would be reasonable to grant the order for eviction.

30. The Tribunal then considered whether to order a delay in execution of the eviction order in term of Regulation 16A(d) of the Tribunal Procedure Rules 2017. The Tribunal notes that the Respondents have a school age child residing in the property, and that the Christmas holiday period is approaching. The latter may make it more difficult to secure alternative accommodation. However, given the risk to the Respondents' health and wellbeing by their continued occupation of the property, the Tribunal is of the view that a lengthy delay would be inappropriate. The Tribunal determines that a delay in execution to 30 January 2025 should be granted.

## **Decision**

31. The Tribunal determines that an eviction order should be granted against the Respondents.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

# J. Bonnar

**Legal Member**

**29 November 2024**